

THE EFFECTIVE DATE OF THIS ORDINANCE IS NOVEMBER 16, 2006

ORDINANCE NO. 06-40-436

OPINION, FINDINGS AND ORDINANCE  
OF  
THE BOARD OF COUNTY COMMISSIONERS  
OF  
FREDERICK COUNTY, MARYLAND

RE: APPLICATION OF TOLL BROTHERS, INC.

REZONING CASE NO. R-05-07

OPINIONS/FINDINGS

Toll Brothers, Inc. filed this application to change the zoning classification of 50.58 acres of land, more or less, from the Agriculture (A) zone to the Mixed Use Development (MXD) floating zone, all as more fully described in the record. The property is located on the north corner of Elmer Derr Road and New Design Road in the Adamstown Planning Region.

The applicant is requesting to rezone a 93.73 acre parcel, commonly referred to as the "Younkins Farm" from Agriculture (A) into two separate floating zone categories: this Mixed Use Development (MXD) and a Planned Unit Development (PUD) application (Case No. R-05-08). The site under consideration for the MXD zone is a 50.58 acre portion of the 93.73 acre parcel.

Frederick County Planning and Zoning Division staff recommended approval of the request with three conditions. The Frederick County Planning Commissioner voted to recommend approval of the request, with denial of the

residential component, making the land use for the entire site industrial and commercial.

Based on all the evidence submitted in this case, the Board makes the following specific findings of fact (in addition to the finding above) on each of the matters mentioned in Md. Code Annotated, Article 66B, § 4.05(a):

1. POPULATION CHANGE

The current population of the one-mile neighborhood as defined in the Staff Report is 3,733. With a potential for 153 dwellings, the development could have a population of 460 based on an average household size of 3.01 people per household for this neighborhood.

2. AVAILABILITY OF PUBLIC FACILITIES

A. SCHOOLS

As of December 31, 2005, Tuscarora Elementary School is at 104% of capacity, Crestwood Middle School is at 89% capacity and Tuscarora High School is at 118% of capacity. The pupil yield from the residential units would be approximately 33 elementary, 14 middle school and 14 high school students. This pupil yield is based on 153 townhouse and two over two units and uses the pupil yield factors for the schools serving the site.

B. FIRE AND RESCUE SERVICES

The proposed MXD would be served by the Westview Station (United Steam Fire Engine Company No. 3) located at 5225 New Design Road, located approximately 1.75 miles from the site. Emergency services are also available from the Jefferson Volunteer Fire Company, the Braddock Heights

Volunteer Fire Company and the Carroll Manor Volunteer Fire Company, all located between four and five miles from the site. The furthest point within the proposed MXD would be located less than 1.75 miles from the existing Westview Station, which is within the General Service Area Guidelines of the Frederick County Comprehensive Plan (Volume 1, 2000).

#### C. POLICE SERVICE

Police protection will be provided by the Frederick County Sheriff's Department and the Maryland State Police. The nearest Sheriff's Department facility is located at the Law Enforcement Complex on Airport Drive, approximately 6 miles from the site.

#### D. PARKS AND RECREATION FACILITIES

The 127 acre County-owned Ballenger Creek District Park is located approximately 1.25 miles from the site. Available amenities at the park include baseball fields, tot lots, picnic areas and volleyball. The 426 acre federally owned Monocacy National Battlefield is located approximately two miles from the site.

#### E. LIBRARIES

The Ballenger Creek area is currently served by the central library facility - C. Burr Artz Library - located on East Patrick Street in Frederick City, approximately 5 miles from the site.

## F. WATER AND SEWER

The current sewer service classification of the site is S-4 DEV, indicating service within 4 to 6 years. The current water service classification is W-4 DEV, indicating service within 4 to 6 years.

Public water and sewer service are presently provided to the site.

Water service is provided via a ten-inch line. Both water and sewer lines are located in the right-of-way of New Design Road. Water comes from the Potomac River through the New Design Road Water Treatment Plant. Sewage treatment is provided by the Ballenger Creek Wastewater Treatment Plant; with discharge of treated effluent to the Monocacy River. There is limited remaining capacity at the Ballenger Wastewater Treatment Plant; additional capacity will be provided with a planned addition to this facility, to be called the McKinney Wastewater Treatment Plant.

The current FY 2006-2011 Capital Improvements Program identifies funding for phase one of the McKinney Wastewater Treatment Plant scheduled for fiscal year 2006. Completion of phase one will provide an additional 6 million gallons per day of sewage treatment capacity, with an ultimate capacity of approximately 18 million gallons per day. With the construction of the McKinney Wastewater Treatment Plant, the existing 24 inch water line serving the site will be converted to a treated sewage effluent flow line.

Water service for the MXD will be provided by a proposed sixteen inch waterline that will extend southward along Ballenger Creek Pike from

Lambert Drive to a terminus at Elmer Derr Road adjacent to the site. A sixteen inch feeder line is proposed by the Linton Farm PUD developer connecting to the waterline along Ballenger Creek Pike and extending through to the MXD property line.

#### G. SUMMARY

Public facilities are or will be available to serve the proposed development, in light of its approval without a residential component.

#### 3. PRESENT AND FUTURE TRANSPORTATION PATTERNS

The property is located at the northwest corner of New Design Road and Elmer Derr Road. New Design Road is a north-south major arterial, and one of four primary north-south routes through the Adamstown Planning Region (together with Ballenger Creek Pike, Buckeystown Pike and US Rt. 15). New Design Road is flanked on the east by Buckeystown Pike and on the west by Ballenger Creek Pike.

English Muffin Way runs east-west and is designated a major arterial in the Adamstown Region Plan. It currently dead-ends into the site from the east. The applicant has offered to extend English Muffin Way through the site to Elmer Derr Road. With the completion of Elmer Derr Road through the property, English Muffin Way will be a major arterial from its intersection with Buckeystown Pike to US Rt. 15.

Traffic counts conducted by the Maryland State Highway Administration in 2004 report the following average annual daily traffic on major roads in the vicinity of the MXD:

New Design Road south of English Muffin Way  
Northbound: 2,173  
Southbound: 2,614

The Adamstown Region Plan provides for the extension of English Muffin Way to create an east-west connector through the Adamstown Region, connecting all major north-south routes. The applicant has offered to construct the extension of English Muffin Way across the property to County standards for a major arterial road. The applicant has indicated that construction of English Muffin Way will be phased in conjunction with the requirements for the development of the MXD.

4. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT FOR THE AREA

A. ADJOINING LAND USES

The site is located at the juncture of agricultural, industrial and residential uses. Much of the residential development is to the north of the site, industrial development is to the south and east, and agricultural land to the west.

The residential development on the northeastern and northwestern sides of the site includes the Wellington Trace PUD and the Linton Farm PUD. The Wellington Trace development is built at an approved density of 4.9 units per acre. The Linton Farm PUD was granted Phase II conditional approval in October of 2004 and the portion of that development that adjoins this site has a density of

10 - 14 dwelling units per acre and 14 - 20 dwelling units per acre. To the north of the Wellington Trace PUD is the Robin Meadows subdivision built as a density of 3.9 dwelling units per acre. All these developments are on public water and sewer.

The industrial and commercial development to the east and south of the site includes the Wedgewood Business Park, the Bowmans Plains Industrial Park, Tamko Asphalt, and a quarry owned by Essroc, a cement production company. To the southwest of the site is predominantly farmland.

Immediately across from the site on the southeast side of New Design Road is a property zoned Agriculture occupied by an electrical substation owned by Allegheny Power.

#### B. AGRICULTURAL PRESERVATION

A 106 acre farm parcel located immediately to the west of the project site is enrolled in the Agricultural Preservation Program as a Maryland Agricultural Land Preservation Foundation (MALPF) District. There are no other agricultural preservation districts in the surrounding area.

The Maryland Agricultural Land Preservation Foundation was established by the Maryland General Assembly in 1977 and is part of the Maryland Department of the Agriculture. The Foundation purchases agricultural preservation easements in defined districts that restrict development on prime farmland and woodland.

### C. HISTORICAL AND CULTURAL SITES

There are no historic structures on the property. Located adjacent to the site to the south of the site along Elmer Derr Road, is a property listed in the Maryland Inventory of Historic Properties. The historic property is composed of farm buildings referred to as the E. D. Zimmerman "Manor" Property. It is composed of a mid-19<sup>th</sup> century frame Italianate influenced house with a one and one-half story back building, a frame bank barn, a livestock loafing shed, a milk house and other agricultural sheds and outbuildings.

### D. RELATIONSHIP WITH NATURAL FEATURES

The site of the MXD is located in an area historically utilized for agriculture, but is rapidly being developed in residential and industrial uses. As a result, areas of open fields and limited woodlands are juxtaposed with landscaped areas surrounding residential and commercial development.

The site has modest slopes, with very few areas exceeding 15%. There are no documented floodplain soils on the site. It appears the topography of the site poses no constraints on the proposed MXD development.

### 5. RECOMMENDATION OF THE FREDERICK COUNTY PLANNING COMMISSION

The Frederick County Planning Commission recommended approval of the MXD floating zone with the three conditions recommended by Planning Division staff, and added as a fourth condition the recommended denial of the requested residential components, resulting in the use of the entire site for industrial and commercial uses.



6. RELATIONSHIP WITH THE FREDERICK COUNTY  
COMPREHENSIVE PLAN

Based on a literal interpretation of the Comprehensive Plan Map in the Adamstown Region Plan, the proposed extension of English Muffin Way asymmetrically bisects the Younkens property and crosses the neighboring property (Linton Farm PUD) to connect with the existing intersection at Ballenger Creek Pike. The Comprehensive Plan Map designates the land to the north of this road alignment as Medium Density Residential, and the land to the south as Limited Industrial.

During the approval process of the Linton Farm PUD, it was decided that the actual road alignment for the proposed extension of English Muffin Way would be moved to the south to intersect with Elmer Derr Road instead of Ballenger Creek Pike. It is determined in this case the intent of the Region Plan was that the road alignment would define the boundary between land use designations. Therefore, as the actual road alignment was modified from that shown in the Adamstown Region Plan, so too will the boundaries of the land use designations be modified.

More generally, properties are eligible for MXD zoning if they are designated Office/Research or Limited Industrial in the Comprehensive Plan. The portion of the Younkens Farm parcel located south of the proposed extension of English Muffin Way is designated Limited Industrial in the Adamstown Region Plan. This area, therefore, is eligible for application of the MXD floating zone.

Based on all the evidence submitted in this matter, the Board of County Commissioners determines that this project concept is both feasible and desirable. The Board determines that the MXD district satisfies the objectives and requirements set forth in subsections A through G of Frederick County Code § 1-19-324 with the conditions below. This proposed MXD satisfies the purposes and objectives of the MXD district. This proposed MXD allows for the introduction of a mixture of uses in an integrated manner while encouraging an efficient use of the land. This proposal also creates an environment that ensures the integration and compatibility of the project with existing and proposed surrounding development.

This site has a classification of at least W4/S4 on the County Water and Sewerage Plan and this site, with its companion PUD application, is consistent with the "community concept" of development as described in the County Comprehensive Plan. This property is located adjacent to existing or planned arterial roads that are or will be adequate to service the proposed development. The proposed site is feasible for the MXD district and satisfies the MXD purpose, objectives and standards. The proposed MXD, with conditions, is compatible with the existing uses in the neighborhood and with the proposed uses for the neighborhood as shown on the County Comprehensive Plan.

The maximum permitted land use mix percentage residential portion is 0%, for the commercial portion up to 45%, and for the employment portion up to 65%.

The proposed MXD floating zone classification will be granted subject to the conditions stated below.

## ORDINANCE

BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, Rezoning Case No. R-05-07 is hereby **GRANTED** for the reclassification of 50.58 acres of land, more or less (as delineated in the record), from the Agricultural (A) zone to the Mixed Unit Development (MXD) Floating Zone, subject to the following conditions<sup>1</sup>:

1. The applicant shall dedicate to the County a minimum of a 100 foot right-of-way for the extension of English Muffin Way.
2. The applicant shall design and construct the extension of English Muffin Way subject to the review and approval of the County's Division of Public Works.
3. Architectural renderings of the employment uses are to be provided at the Phase II review.
4. The proposed residential component is denied; the entire site is allowed to be used for commercial and employment uses with English Muffin Way acting as a buffer for the residential uses proposed in the companion PUD application.

The conditions included as part of the granting of this MXD floating zone request are deemed necessary for the health, safety and welfare of the community; are imposed as an integral part of this approval; and are not separable

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<sup>1</sup> The term "applicant" or "developer" as used in this Ordinance includes all present and future owners and developers of the property. These conditions run with the land.

from the decision to grant the requested floating zone application. If, for any reason, a court of competent jurisdiction finds that any material portion of any of these conditions is substantially invalid or unenforceable, the zoning shall revert to the previous Agriculture (A) zoning classification.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD, that the Zoning Administrator is hereby authorized and directed to make the appropriate change on the Zoning Map showing this reclassification, with conditions, as indicated above.

The undersigned hereby certify that this Ordinance was approved and adopted on the 16th day of November, 2006.

BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

By: Michael L. Cady  
Michael L. Cady, Vice President

John R. Lovell, Jr.  
John R. Lovell, Jr.

ATTEST:

Douglas D. Browning  
Douglas D. Browning  
County Manager

Bruce L. Reeder  
Bruce L. Reeder

Commissioners John L. Thompson, Jr. voted against the proposed reclassification. Commissioner Jan H. Gardner was absent.

MJC 11/16/06